



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240



In Reply Refer To:
FWS/AES/DCHRS/043769

FEB 25 2010

Ephraim S. King, Director
Office of Science and Technology, Office of Water
U.S. Environmental Protection Agency
Washington, D.C. 20460

RE: Formal Consultation on Aquatic Life Criteria Cyanide in State and Tribal Water
Quality Standards

Dear Mr. King,

This document transmits the U.S. Fish and Wildlife Service's (Service) draft biological opinion based upon our review of the proposed continuing approval or promulgation of acute and chronic cyanide criteria in State and Tribal water quality standards and their effects on endangered and threatened species and designated critical habitats in accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)(ESA). Your March 23, 2007, request for formal consultation was received on March 26, 2007.

In our draft biological opinion we conclude the proposed action is likely to jeopardize the continued existence of 178 listed species and destroy or adversely modify critical habitats designated for 84 species. We recognize our conclusions depart from those reached in your Biological Evaluation for the proposed action. The primary explanation of this difference is that we developed and applied additional analytical approaches beyond those used by EPA to assess the nature and extent of effects of cyanide. These additional analyses lead us to reach conclusions that many more species were likely to be adversely affected by cyanide. While there are significant uncertainties associated with the analyses used by both EPA and the Service, we provide the benefit of the doubt to the species in such situations, consistent with the legislative history of the ESA (see H.R. Rep. No 96-697, pg. 1442).

In this draft we provide two Reasonable and Prudent Alternatives (RPA) that we believe would avoid jeopardy or adverse modification. These RPAs represent our best efforts to identify a path forward, but we look forward to continued cooperation with EPA to identify other possible alternatives that would achieve the same objectives.

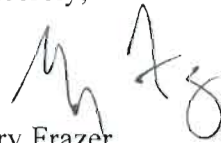
Finally, we recognize the length of time it has taken to arrive at this draft biological opinion. This delay was largely a consequence of our mutual decision for the Services to develop independently the analytical framework for evaluating the effects of the action. After much effort and internal review, we are confident that the analytical framework we developed has and will result in defensible determinations under the ESA. With this



analytical framework now in place, we believe we can complete consultation much more expeditiously and efficiently. Our agencies identified the issuance of this draft as a necessary step to continuing our discussions on coordinating Endangered Species Act compliance for EPA's Clean Water Act activities. We look forward to continuing our discussions, as we believe there is much progress we can make together.

Please contact me at your convenience if you would like to schedule a meeting to discuss this draft biological opinion and next steps. I can be reached at 202-208-4646.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Frazer', written over a light gray circular stamp.

Gary Frazer
Assistant Director for
Endangered Species